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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P.(C) No. 6155 of 2006

Petitioner : Amrika Bai Rathore

Versus

Respondents : Manmohan & others

Post for order on 18th June, 2007.

Sd/-
Satish K. Agnihotri
Judge

Sd/-
Counsel for petitioner
18.6.07

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (C) No. 6155 of 2006

Petitioner		Amrika Bai Rathore W/o Shri Badri Prasad Rathore, Aged about 34 years, R/o Village Kirara, Thana Baradwara, Tehsil Sakti, District Janjgir Champa (Chhattisgarh)
	Versus	
Respondents	1.	Manmohan S/o Budheshwar Rathore, Aged about 57 years, R/o Village Kirara, Thana Baradwara, Tehsil Sakti, District Janjgir Champa (Chhattisgarh)
	2.	Amit Kumar S/o Pradeep Kumar Rathore, Aged about 25 years, R/o Village Kirara, Thana Baradwara, Tehsil Sakti, Dist. Janjgir Champa (Chhattisgarh)
	3.	Shriram Yadav S/o Jugutram Yadav, Aged about 62 years, R/o Village Kirara, Thana Baradwara, Tehsil Sakti, Dist. Janjgir Champa Chhattisgarh
	4.	Dilwar Singh S/o Shri Pawan Singh Gond, Aged about 55 years, R/o Village Kirara, Thana Baradwara, Tehsil Sakti, Dist. Janjgir Champa Chhattisgarh
	5.	Kumar Singh S/o Dheerpal Singh Rajpoot, Aged about 40 years, R/o Village Kirara, Thana Baradwara, Tehsil Sakti, Dist. Janjgir Champa (Chhattisgarh)
	6.	Narsingh Vishwakarma S/o Umarao Vishwakarma, Aged about 38 years, R/o Village Kirara, Thana Baradwara, Tehsil Sakti, Dist. Janjgir Champa (Chhattisgarh)
	7.	Devprasad Chauraram Yadav, Aged about 33 years, R/o Village Kirara, Thana Baradwara, Tehsil Sakti, Dist. Janjgir Champa Chhattisgarh
	8.	S. Bhagat, Returning Officer, Agricultural Extension Officer, Malkharauda, Dist. Janjgir Champa (Chhattisgarh)
	9.	S.R. Sidar, Teacher, Government Girls Higher Secondary School, Jejoupur, Dist. Jajgir Champa (Chhattisgarh)
	10.	Jayant Kumar Sharma, Agricultural Extension Officer, Malkharauda, Dist. Janjgir Champa (Chhattisgarh)

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WRIT PETITION UNDER ARTICLE 227 OF THE COSTITUTION OF INDIA

SB: Hon'ble Mr. Justice **Satish K. Agnihotri**

Shri Sanjay Kumar Agrawal, Advocate for the petitioner.

Shri C. Jayant Rao, Advocate for the respondent No.1.

ORDER

(Passed on this 18th of June, 2007)

1. The petitioner has filed this petition under Article 227 of the Constitution of India, challenging the order dated 18th October, 2006 (Annexure P/1) passed by the Sub Divisional Officer (Revenue), District – Janjgir Champa in Panchayat Petition Case No. 17 A-89/04-05, whereby the election of the petitioner as Sarpanch of Village Panchayat Kirari, Tahsil – Sakti, District – Janjgir Champa, held on 15.1.2006 was declared as void.

2. The brief facts, in nutshell, are that the petitioner along with respondents No. 1 to 7 contested the election for the post of Sarpanch of Village Panchayat – Kirari, Tahsil – Sakti, District – Janjgir Champa, which was held on 15.1.2005. The petitioner was declared as returned candidate in the said election.

3. Feeling aggrieved, the respondent No.1, filed an election petition under the provision of Section 122 (i) of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'the Act, 1993'), calling in question the election of the petitioner on the post of Sarpanch of Village Panchayat – Kirari.

4. The case of the respondent No.1 before the Sub Divisional Officer (Revenue) was that in the election in question, he had also contested for the post of Sarpanch. The post of Sarpanch was

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meant for the candidate of general category. The respondent No.1 was on the fourth position. He was defeated by the petitioner from the margin of 200 votes. The petitioner had adopted corrupt practices to win the election, which is violative of the provisions of Rule 22 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995'). The allegations of the respondent No.1 to the conduct of the petitioner were as under:-

(i) The petitioner sought for votes from the voters in the name of caste and religion. While requesting for voting in her favour, she made voters to put their hands on the pictures of Gods and Goddesses.

(ii) The petitioner gave incorrect information in the nomination form. Her husband namely Badri Prasad is ex Sarpanch of the same village Panchayat, against whom R.R.C. case for recovery of Rs. 8717/- is pending. Therefore, the petitioner was not entitled to contest the election.

(iii) The petitioner openly distributed liquor amongst the voters for votes.

(iv) The petitioner has got printed his election symbol on the election slip which is contrary to the code of conduct.

(v) The petitioner has misused the government officials as her brother-in-law (elder brother of the husband of the petitioner 'Jeth') namely Shri Ganesh being an employee of the Chhattisgarh State Electricity Board, openly participated in the election campaign of the petitioner.

(vi) Lesser number of vote cast in favour of the petitioner were declared invalid, whereas fifty votes, cast in favour of the respondent No.1 were declared as invalid.

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5. After recording the evidence and hearing learned counsel for the parties, the Sub Divisional Officer (Revenue), District – Janjgir Champa vide impugned order dated 18.10.2006, passed in Panchayat Case No. 17 A-89/04-05 (Manmohan Vs. Amrika Bai & others) allowed the election petition holding that the conduct of the petitioner, during the election for the post of Sarpanch, held on 15.1.2005, was within the ambit of 'corrupt practices' as per the provisions of Rule 22 of the Rules, 1995.

6. Shri Sanjay Kumar Agarwal, learned counsel appearing for the petitioner (returned candidate) would submit that the election Tribunal has not considered the allegations levelled against the petitioner in its proper perspective. The respondent No.1 (election petitioner) in his election petition has made vague allegations which have not been proved strictly in the election petition. The election Tribunal in its order has proved the allegations on the basis of guess work and conjectures.

7. The petitioner has denied all the allegations specifically to the effect that the petitioner had ever circulated or distributed pamphlets and posters, as was produced, in the election, herself or through her agents during the election. The allegation of outstanding government dues is also incorrect as there existed R.R.C. against the husband of the petitioner not against herself. The distribution of liquor allegedly by her elder brother-in-law has not been proved as no one was examined to establish that on a particular day and at particular time the liquor was distributed by the brother-in-law of the petitioner.

8. The publication of the name of the petitioner and her symbol on the voting slip was also denied by the petitioner. The respondent No.1 has not lodged any complaint before the police or before the

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election officers prior to filing of the election petition. It is well settled that particulars of the corrupt practices in the election petition should be pleaded specifically and such charge should also be proved like criminal charges. The charge of corrupt practice cannot be proved on the basis of probabilities.

9. Per contra, Shri C. Jayant Rao, learned counsel appearing for the respondent No.1 (election petitioner) submits that the allegations made by the respondent No.1 have been duly found proved by the election Tribunal. It was admitted that the respondent No.1 has not made any complaint to the election authorities or police during the election with regard to the distribution of pamphlets, publishing posters of Gods and Goddesses, securing votes in the name of Gods and Goddesses, distribution of liquor, and publication of name and symbol on the voter slips. Learned counsel supported the judgment and order passed by the election Tribunal.

10. I have heard learned counsel for the parties and perused the pleadings and documents appended thereto.

11. On perusal of the election petition it is found that the allegations levelled by the respondent No.1 were vague, as the respondent No.1 has not specified the name of Gods and Goddesses, whose photos were purportedly used on pamphlets and posters for securing votes. It was also not pointed out asto when names of Gods and Goddesses were used, who have been influenced by them. With regard to canvassing and the distribution of liquor by elder brother-in-law of the petitioner, no date or time has been specified, whereas the beneficiary of the liquor has also not been specified and there was mere allegation that he openly canvassed for the petitioner and distributed liquor. The publication of names of Gods and Goddesses in the voter slip has also not been specified.

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Name of the publisher is not shown in the pamphlets produced with the election petition.

12. With regard to the filing of wrong affidavit as no government dues are outstanding against her, though admitted, the government dues to the extent of Rs.8717/- was outstanding against her husband. Section 36 of the Panchayat Raj Avam Gram Swaraj Adiniyam, 1993 provides for disqualification for being office bearer of the Panchayat. Sub-section (1) (ca), (cb), (cc) read with Form 4-B, which required to be filed at the time of filling up of the nomination do not provide for disqualification on the ground that the spouse of the candidate has not paid all the dues which is recoverable by the Panchayat. The only requirement is submitting details of the spouse's property. Thus, the petitioner could not have been disqualified on the ground that the government dues to the extent of Rs. 8717/- was outstanding against her husband.

13. The impugned judgment also proceeds on the basis of the probabilities, as the witnesses examined have not specified the date, time or the person who has distributed the voter slips in the name of the Gods and Goddesses or votes were attempted to be secured in the name of Gods or Goddesses by the petitioner or her agents. The respondent No.1 has clearly admitted that no complaint was made to the police or any other election officer with regard to the corrupt practices as alleged by the respondent No.1 against the petitioner.

14. The Hon'ble Supreme Court in the matter of **Raj Narain Vs. Smt. Indira Nehru Gandhi and another** A.I.R. 1972 SC 1302 has propounded following principle dealing with the corrupt practices:-

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"19. .....From these decisions, it follows that facts stated in the petition relating to any corrupt practice must be sufficient to constitute a cause of action. In other words the facts must bring out all the ingredients of the corrupt practice alleged. If the facts stated fail to satisfy that requirement then they do not give rise to a triable issue. Such a defect cannot be cured by any amendment after the period of limitation for filing the election petition. But even if all the material facts are stated in the election petition, for a proper trial better particulars may still be required. If those particulars are not set out in the election petition, they may be incorporated into the election petition with the permission of the court even after the period of limitation....."

15. The Hon'ble Supreme Court in the matter of **Mercykutty Amma Vs. Kadavoor Sivadasan and another** (2004) 2 SCC 217, with regard to the nature of allegation of corrupt practices in the election petition, held as under:-

"27. Allegations of corrupt practices are quasi-criminal charges and the proof that would be required in the support thereof would be as in a criminal charge. The charges of corrupt practices are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in a criminal trial."

16. The Supreme Court in the matter of **Mahadeorao Sukaji Shivankar Vs. Ramaratan Bapu and others** (2004) 7 SCC 181 has held as under:-

"6. Now, it is no doubt true that all materials facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by clause (a) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts

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are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.

7. But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."

17. In view of the well settled principles of law, as enunciated by the Hon'ble Supreme Court in various cases and applying to the facts of the case, it is held that the Sub Divisional Officer (Revenue) has held allegations of corrupt practices, as proved, without examining all the evidence in proper perspective.

18. As a result, for the reasons aforementioned, the impugned order dated 18.10.2006, passed in Panchayat Case No. 17 A-89/04-05 (Manmohan Vs. Amrika Bai & others) by the Sub Divisional Officer (Revenue), District – Janjgir Champa is set aside, as a whole, by remitting back the matter to the Sub Divisional Officer (Revenue) to decide it in accordance with law after affording opportunity of hearing to all the parties, afresh.

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19. The concerned authority is expected to dispose of the matter as expeditiously as possible.

20. The observations made herein above shall not come in the way of consideration and decision of the concerned authority.

21. In the facts and circumstances of the case there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur